

1
2
3
4
5
6
7 IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
8 DIVISION II

9 IN RE THE PERSONAL RESTRAINT
PETITION OF:

10 RONALD MENDES,

11
12 Petitioner.

NO. 48709-8-II

STATE'S RESPONSE TO PERSONAL
RESTRAINT PETITION

13
14 A. ISSUES PERTAINING TO PERSONAL RESTRAINT PETITION:

- 15 1. Should the Court consider issues that were or could have been previously
16 raised in the direct appeal?
- 17 2. Does the petitioner demonstrate constitutional error resulting in actual and
18 substantial prejudice?
- 19 3. Where the petitioner failed to object at trial, does the petitioner demonstrate
20 improper argument which was flagrant, ill-intentioned, unable to be cured
21 by instruction; resulting in actual prejudice?
- 22 4. Does the petitioner demonstrate deficiency of counsel which prejudiced the
23 result of his trial?
- 24 5. Does the petitioner demonstrate an actual attorney conflict, resulting in
25 prejudice?

1 6. Where some evidence of one of the crimes charged revealed that the
2 petitioner had been in jail, does he demonstrate that jurors' awareness of this
3 fact denied him a fair trial?

4 B. STATUS OF PETITIONER:

5 Petitioner, Ronald Mendes, is restrained pursuant to a Judgment and Sentence
6 entered in Pierce County Cause No. 08-1-00527-7. Appendix A.

7 The conviction that the petitioner collaterally attacks here was a second trial, after
8 remand. His first conviction was reversed and remanded because of a jury instruction
9 issue. *See State v. Mendes*, #64912-4-I, noted at 156 Wn. App. 1059(2010)(2010 WL
10 2816974). After he was convicted in this second trial, the petitioner filed a direct appeal of
11 that judgment. *See State v. Mendes*, #42161-5-II, noted at 174 Wn. App. 1074 (2014). The
12 case was then reviewed and affirmed by the Supreme Court. *See State v. Mendes*, 180 Wn.
13 2d 188, 322 P. 3d 791 (2014). Mr. Mendes' petition for certiorari was denied by the United
14 States Supreme Court on March 30, 2015. *See Mendes v. Washington*, 135 S. CT. 1718
15 (2015). This Personal Restraint Petition (PRP) was timely filed March 17, 2016.

16 The substantive facts in this case are detailed in the prior Court of Appeals and
17 Supreme Court decisions. In brief, the petitioner murdered Danny Saylor after entering
18 Saylor's home to argue with him regarding Lori Palomo, a woman that the two men each
19 had a relationship with. 180 Wn. 2d at 191.

20 C. ARGUMENT:

21 1. THE PETITIONER ARGUES ISSUES WHICH COULD HAVE BEEN
22 PREVIOUSLY RAISED IN THE DIRECT APPEAL.

23 As a general rule, "collateral attack by [personal restraint petition] on a criminal
24 conviction and sentence should not simply be a reiteration of issues finally resolved at trial
25 and direct review, but rather should raise new points of fact and law that were not or could
not have been raised in the principal action, to the prejudice of the defendant." *In re*

1 ***Personal Restraint of Gentry***, 137 Wn.2d 378, 388-389, 972 P.2d 1250 (1999). The
2 petitioner in a PRP is prohibited from renewing an issue that was raised and rejected on
3 direct appeal unless the interests of justice require relitigation of that issue. ***In re Personal***
4 ***Restraint of Lord***, 123 Wn.2d 296, 303, 868 P.2d 835 (1994); *see also Gentry*, at 388.
5 The interests of justice are served by reexamining an issue if there has been an intervening
6 change in the law or some other justification for having failed to raise a crucial point or
7 argument in the prior application. ***In re Personal Restraint of Stenson***, 142 Wn.2d 710,
8 720, 16 P.3d 1 (2001).

9 ““This court from its early days has been committed to the rule that questions
10 determined on appeal or questions which might have been determined had they been
11 presented, will not again be considered on a subsequent appeal in the same case.”” ***State v.***
12 ***Bailey***, 35 Wn. App. 592, 594, 668 P.2d 1285 (1983)(quoting ***Davis v. Davis***, 16 Wn.2d
13 607, 609, 134 P.2d 467 (1943)). Because the personal restraint petition process is not a
14 substitute for appeal, the defendant cannot raise a valid issue on collateral attack by simply
15 revising an issue raised and rejected on direct appeal. On this issue, the Washington
16 Supreme Court stated:

17 Simply “revising” a previously rejected legal argument, however, neither
18 creates a “new” claim nor constitutes good cause to reconsider the original
19 claim. As the Supreme Court observed in ***Sanders***¹, “identical grounds
20 may often be proved by different factual allegations. So also, identical
21 grounds may be supported by different legal arguments, . . . or be couched
22 in different language, . . . or vary in immaterial respects”. (Citations
omitted.) ***Sanders v. United States***, *supra* at 16. Thus, for example, “a
claim of involuntary confession predicated on alleged psychological
coercion does not raise a different ‘ground’ than does one predicated on
physical coercion”. ***Sanders***, at 16.

23 ***In re Personal Restraint of Jeffries***, 114 Wn.2d 485, 488, 789 P.2d 731 (1990).
24
25

¹ ***Sanders v. United States***, 373 U.S. 1, 83 S. Ct. 1068, 10 L. Ed. 2d 148 (1963).

1 The Supreme Court and this Court have both stated:

2 We take seriously the view that a collateral attack by PRP on a criminal
3 conviction and sentence should not simply be reiteration of issues finally
4 resolved at trial and direct review, but rather should raise new points of
5 fact and law that were not or could not have been raised in the principal
6 action, to the prejudice of the defendant.

7 *Gentry*, 137 Wn. 2d at 388-389; *In re Personal Restraint of Hegney*, 138 Wn. App. 511,
8 543-544, 158 P. 3d 1193 (2007).

9 The petitioner has had ample opportunity to raise and argue legal issues found in
10 the record. He took a direct appeal, raising numerous issues, including evidence of being
11 the first aggressor, use of reasonable force, disproof of self-defense, and his right not to
12 testify. *See Mendes, supra*. He pursued some of the issues in the Supreme Court. His
13 Statement of Additional Grounds issues included prosecutorial misconduct, failure to sever
14 counts, jury instruction errors, double jeopardy, and denial of public trial. *See*, #42161-5-
15 II, slip op., at 11. The petitioner had the opportunity to raise the current objections
16 regarding closing argument, his custodial status, ineffective assistance and even
17 disqualification of defense counsel, in the same appeal. All the issues, except for the
18 attorney conflict issue, were part of the same record cited and argued in the appeal. The
19 Court should not consider the additional argument now.

20 2. THE PETITIONER FAILS TO DEMONSTRATE CONSTITUTIONAL
21 ERROR THAT RESULTED IN ACTUAL AND SUBSTANTIAL
22 PREJUDICE.

23 a. The petitioner has the burden of proof.

24 To obtain relief in a personal restraint petition challenging a judgment and
25 sentence, the petitioner must show actual and substantial prejudice resulting from alleged
26 constitutional errors, or, for alleged nonconstitutional errors, a fundamental defect that
27 inherently results in a miscarriage of justice. *In re Personal Restraint of Cook*, 114 Wn.2d
28 802, 813, 792 P.2d 506 (1990).

1 b. The prosecuting attorney's closing argument.

2 If a defendant fails to object to a prosecutor's closing argument at trial, any error is
3 waived "unless the prosecutor's misconduct was so flagrant and ill-intentioned that an
4 instruction could not have cured" any resulting prejudice. *State v. Emery*, 174 Wn.2d 741,
5 760–61, 278 P.3d 653 (2012). The defendant must show that "no curative instruction
6 would have obviated any prejudicial effect on the jury, and "the misconduct resulted in
7 prejudice that 'had a substantial likelihood of affecting the jury verdict.'" *State v.*
8 *Thorgerson*, 172 Wn.2d 438, 455, 258 P.3d 43 (2011).

9 The alleged error or misconduct is viewed in the context of the total argument, the
10 issues in the case, the evidence, and the instructions given to the jury. *See, e.g. State v.*
11 *Warren*, 165 Wn.2d 17, 28, 195 P.3d 940 (2008).

12 The defense in the present case was self-defense. It was an unusual circumstance
13 where the petitioner, armed with a pistol, was an uninvited and unwelcome person in the
14 victim's home. The victim reacted angrily and violently when he discovered that the
15 petitioner was present. These facts raised questions of the application of self-defense in
16 general (Instruction #18); Instruction #23: the "no duty to retreat" instruction, and
17 Instruction #21: "revival" of self-defense. *See* Appendix B. The issues for the parties to
18 argue included: Who was acting lawfully? Did the petitioner have a duty to retreat or cease
19 hostilities? Did the victim/homeowner? Was the petitioner withdrawing from combat at the
20 time? Did he "clearly apprise" his adversary of this good faith withdrawal from combat?

21 From the beginning of his argument, defense counsel made it clear "It's self-
22 defense from any measure." 13 RP 1368. He concluded with "It is self-defense, and I don't
23 care how you shape it or twist or turn it." 13 RP 1393.

24 Defense counsel made it clear that victim Danny Saylor was as responsible for the
25 incident as the defendant: "but for the grace of God, Danny Saylor would be sitting there

1 as a defendant.” 13 RP 1368. Later on in his argument, defense counsel again argued that
2 the victim bore responsibility for this crime:

3 Who had an opportunity to stop; who had an opportunity to stop
4 this? Danny Saylor had an opportunity to stop this. Why? We’re never,
 ever going to understand why Danny Saylor would do what he did.

5 13 RP 1387.

6 The jury was correctly instructed on self-defense regarding justifiable
7 homicide/self-defense in general in Instruction #18 (CP89), and regarding assault in
8 particular in Instruction #19 (CP 90). Both instructed the jury that the State had the burden
9 to prove the absence of the defense, beyond a reasonable doubt. *Id.* Instruction #13 told the
10 jury the elements of felony murder that the State had to prove beyond a reasonable doubt.
11 CP 84. Element (2) was “That the defendant was committing assault in the second degree.”
12 *Id.*

13 The petitioner criticizes the prosecutor for arguing the law as given in the
14 instructions and the evidence produced at trial. In her closing argument, the prosecutor
15 argued the elements instructions for murder, #10 and #13. CP 81, 84. In the petition, at 8,
16 the petitioner excerpts a small part of the prosecutor’s argument 13 RP 1359-1360. When
17 read in full, and in context, it is clear that the prosecutor is arguing how the evidence meets
18 the requirements of the felony murder instruction.

19 The prosecutor also called the jurors’ attention to Instruction #18 regarding self-
20 defense. 13 RP 1356-1357. She correctly quoted from it and argued its application to this
21 case. She went on to point out and argue the self-defense “revival” instruction, #21.13 RP
22 1358.

23 Some of the argument that the defendant now complains of (Pet., at 5) is in rebuttal
24 where the prosecutor responded to this line of argument. She rejects the defendant’s role-
25 reversal argument and correctly points out that “as a homeowner, he has the absolute right

1 to defend himself in his own home.” 13 RP 1396. It is true that the “no duty to retreat”
2 instruction, #23 (CP 94), is given in the context of self-defense of the accused. *See* . A
3 prosecutor may properly argue that evidence does not support the defense theory, or to
4 fairly respond to defense counsel's argument. *See State v. Russell*, 125 Wn.2d 24, 87, 882
5 P.2d 747 (1994).

6 The State is given wide latitude to argue reasonable inferences from the evidence
7 and to apply the law to the facts. *See Thorgerson*, 172 Wn. 2d at 448. Throughout her
8 argument, the prosecutor properly argued conclusions and inferences from the evidence
9 and application of the law given in the instructions. She also argued that the defendant
10 committed the crime charged, murder. This was a proper ultimate conclusion from the
11 evidence presented.

12 Even if the closing argument had been improper, the petitioner must show that the
13 argument could not have been cured by instruction. *See Emery; Warren, supra*. In general,
14 jurors are presumed to follow the court’s instructions. *See State v. Kalebaugh*, 183 Wn. 2d
15 578, 355 P. 3d 253 (2015). A proper instruction can even cure the effect of a prosecutor’s
16 argument that improperly described the burden of proof. *See, Warren, supra*.

17 Here, as in *Warren*, if the argument was improper, the court could have so
18 instructed the jury and then repeated or elaborated upon the instructions regarding self-
19 defense. The petitioner did not object, nor did he request a curative instruction.

20 *Emery, Warren*, and *Thorgerson* are all direct appeals. They discuss the standard
21 of review and burden of persuasion in that context. In a PRP, the burden shifts. The
22 petitioner must show not only a constitutional violation, such as improper argument, but
23 also that the argument caused “actual and substantial” prejudice. *See Cook, supra*. In other
24 words, the petitioner must show not the “substantial likelihood” standard on appeal; but
25

1 that the improper argument itself *actually* caused the conviction. The petitioner makes no
2 such showing.

3 c. Ineffective assistance of counsel.

4 To establish a claim of ineffective assistance of counsel, a defendant must show (1)
5 that counsel's performance was deficient, and (2) the deficient performance prejudiced the
6 defense. *Strickland v. Washington*, 466 U.S. 668, 685-687, 104 S. Ct. 2052, 80 L. Ed 2d
7 674 (1984); *State v. Thomas*, 109 Wn.2d 222, 225-226, 743 P.2d 816 (1987).
8 "Surmounting Strickland's high bar is never an easy task." *Padilla v. Kentucky*, 559 U.S.
9 356, 371, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010).

10 Counsel's performance is deficient when it falls below an objective standard of
11 reasonableness under prevailing professional norms. *State v. McFarland*, 127 Wn.2d 322,
12 335, 899 P.2d 1251 (1995). There is a strong presumption that counsel's performance was
13 not deficient. *Id.* The court reviews counsel's performance in the context of all of the
14 circumstances presented by the case and the trial. *Id.* at 334-35. Performance is not
15 deficient where counsel's conduct can be characterized as legitimate trial strategy or
16 tactics. *State v. Kylo*, 166 Wn.2d 856, 863, 215 P.3d 177 (2009); *McFarland*, 127 Wn.2d
17 at 336. Strategic choices made after thorough investigation of law and facts relevant to
18 plausible options are virtually unchallengeable. *Strickland*, 466 U.S. at 690.

19 A defendant establishes prejudice by showing there is a reasonable probability that
20 the result of the proceeding would have been different but for counsel's unprofessional
21 errors. *McFarland*, 127 Wn.2d at 335. When a defendant challenges a conviction, "the
22 question is whether there is a reasonable probability that, absent the errors, the fact finder
23 would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695.

24 The decision of when or whether to object is a classic example of trial tactics. *See*
25 *State v. Kolesnik*, 146 Wn. App. 790, 801, 192 P.3d 937 (2008). The decision not to object

1 during closing is generally within the wide range of permissible professional legal conduct.
2 **Strickland**, 466 U.S. at 689. It is not uncommon for a lawyer to refrain from objecting
3 during closing arguments, absent egregious misstatements. **In re Pers. Restraint of Davis**,
4 152 Wn.2d 647, 717, 101 P.3d 1 (2004).

5 Defense counsel's choice to address the prosecutor's argument in closing rather
6 than with an objection was tactical. Also, the petitioner fails to show that an objection
7 would likely have been sustained.

8 d. Defense counsel conflict of interest.

9 The right to counsel includes the right to the assistance of an attorney who is free
10 from any conflict of interest in the case. See **State v. Dhaliwal**, 150 Wn. 2d 559, 566, 79 P.
11 3d 432 (2003). To show a violation of the right to conflict-free counsel, a defendant must
12 show that (a) defense counsel "actively represented conflicting interests", and (b) the
13 "actual conflict of interest adversely affected" his performance. **In re Personal Restraint**
14 **of Gomez**, 180 Wn.2d 337, 349-350, 325 P. 3d 142 (2014), citing **Cuyler v. Sullivan**, 446
15 U.S. 335, 350, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980); see also **Mickens v. Taylor**, 535
16 U.S. 162, 174, 122 S. Ct. 1237, 152 L. Ed. 2d 291 (2002). The alleged conflict must be
17 more than merely possible or theoretical. **Gomez**, at 350.

18 A criminal defense attorney's mistake during trial does not, by itself, create a
19 conflict of interest between the attorney and the defendant. Bar complaints and claims of
20 ineffective assistance only create a *potential* conflict of interest. See **State v. Rosborough**,
21 62 Wn. App. 341, 346, 814 P.2d 679 (1991)(ineffective assistance); **State v. Sinclair**, 46
22 Wn. App. 433, 437, 730 P.2d 742 (1986) (bar complaint).

23 The petitioner alleges for the first time in this PRP that trial counsel should have
24 been disqualified for a conflict of interest. Pet., at 9. This is another issue that was not
25 raised and preserved in the trial court, and if genuine, could and should have been raised in

1 the direct appeal. Procedural issues aside, the petitioner fails to allege 1) an actual, specific,
2 conflict and, 2) prejudice. *See Gomez, supra*. His allegation is the type of speculative,
3 theoretical claim the Court refuses to hear. *Id.*

4 The petitioner probably did not raise issues on appeal regarding either conflict or
5 ineffective assistance of counsel because there is no basis for them. In the first appeal, trial
6 counsel was found ineffective where, although he requested a self-defense instruction, he
7 did not request a “revived self-defense” instruction. *See Mendes*, 156 Wn. App. 1059
8 (2010 WL 2816874). There was no criticism of his trial strategy or other conduct of the
9 trial in general. *Id.*

10 The petitioner cites no authority for the proposition that attorneys found ineffective
11 on appeal automatically or presumptively have a conflict, or are automatically
12 “disqualified”. The defendant/petitioner must demonstrate an actual conflict, resulting in
13 prejudice. The petitioner fails to cite to any evidence of an actual conflict in the record, and
14 fails to provide evidence outside the record, such as an affidavit.

15 Even if trial counsel had been found to be ineffective in the general conduct of the
16 trial, unless the basis was an ongoing conflict of interest, he would not be disqualified from
17 representing the defendant in the new trial on remand.

18 e. Jury awareness that the petitioner was in custody.

19 Generally, in order to protect the defendant’s right not only be presumed innocent
20 but also to “appear” innocent, courts try to minimize any indication that the defendant is in
21 custody. This issue usually arises on appeal where the defendant challenges courtroom
22 security measures or restraint of the defendant. *See e.g. Holbrook v. Flynn*, 475 U.S. 560,
23 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986)(presence of armed officers); *State v. Finch*, 137
24 Wn.2d 792, 844, 975 P.2d 967 (1999)(shackling of defendant).

1 In *State v. Gonzalez*, 129 Wn. App. 895, 120 P. 3d 645 (2005), the defendant was
2 in custody when his trial began. During the jury selection process, the trial judge actually
3 informed the venire that the defendant could not post bail, was in custody, and was
4 transported in restraints and under guard. *Id.*, at 897. The court then instructed them to
5 remain fair despite all that. *Id.* At the next opportunity when outside the presence of the
6 venire, the defendant moved for a mistrial. *Id.*, at 899.

7 But sometimes, through relevant evidence or testimony, the jury becomes aware of
8 the fact that the defendant is, or was, in custody. In *State v. Mullin–Coston*, 115 Wn. App.
9 679, 692, 64 P.3d 40 (2003), the defendant was charged with murder. While he was in jail
10 pending trial, the defendant phoned a friend and made incriminating statements. The friend
11 told the police, and the jail phone calls were used at trial. *Id.*, at 684. The defendant argued
12 that any reference to him being in custody unconstitutionally violated his right to fair trial.

13 The Court rejected a defendant's argument. The court held that (1) although
14 testimony referencing custody may “carry some prejudice, [it does] not carry the same
15 suggestive quality of a defendant shackled to his chair during trial”; and (2) a “reasonable
16 juror would know that a defendant in a first degree murder trial was not likely to be
17 released pending trial ... regardless of whether he was later found to be innocent.” *Mullin–*
18 *Coston*, 115 Wn. App. at 693. The court considered the defendant's constitutional
19 argument but ultimately concluded that the issue was evidentiary, not constitutional, in
20 nature. *Id.* at 692–695.

21 In a similar case, *State v. Classen*, 143 Wn. App. 45, 62-63, 176 P. 3d 582 (2008),
22 the defendant was also charged with first degree murder. He asserted that, due to bipolar
23 disorder, he could not premeditate the crime. He called a psychologist who testified that
24 Classen suffered from bipolar disorder and was in a dissociative state at the time of the
25 offense. He also called a pharmacologist, who testified that the anti-depressive medications

1 Classen was taking at the time of the homicide could cause a “manic flip” in a bipolar
2 patient, precipitating a manic state. However, in rebuttal, the State called jail staff who
3 testified that Classen had exhibited no behavioral problems during his 14 months in
4 custody; nor did he receive infractions for even minor offenses.

5 The psychological evaluation team from Western State Hospital testified that
6 Classen's behavior over the previous 14 months in custody was an important source of
7 collateral information for purposes of diagnosis, and a person with bipolar disorder would
8 invariably have problems in custody. His behavior did not show effects of bipolar disorder.
9 Classen argued that the testimony about his pretrial behavior while in custody violated his
10 right to a fair trial. *Id.*, at 61. Citing *Mullin–Coston*, 115 Wn. App. at 692–95, this Court
11 concluded that the issue was evidentiary in nature and rejected the defendant’s argument
12 that the revelation denied him a fair trial.

13 Here, the petitioner could have raised this issue with the trial court, as *Classen* and
14 *Mullin–Coston* did. That he did not deprive the reviewing court important details
15 necessary to determine whether his rights were violated. The fact that the jury knows a
16 defendant's custodial status is alone insufficient to justify a new trial. Here, in addition to
17 murder, the petitioner was charged with four counts of witness tampering. CP 44-45. Some
18 of the evidence used to prove those counts was recordings of phone calls the petitioner
19 made from the jail. Beyond the fact that his custody status was revealed in the phone calls,
20 the petitioner has not demonstrated how that revelation was a constitutional violation
21 resulting in prejudice. “Many factors go into the determination of whether a defendant will
22 be released pending trial, including the seriousness of the charged crime and the person's
23 ability to pay bail.” *Mullin–Coston*, 115 Wn. App. at 693. The jury could not have been
24 surprised to hear that petitioner had been in jail, or even still was in jail, given the fact that
25 he was charged with murder.

1 It is an unfortunate fact that many defendants in criminal cases are held in custody
2 because they cannot afford bail. But, merely because the jury is aware that the defendant is
3 in jail does not deny him a fair trial. As the United States Supreme Court has said:

4 This does not mean, however, that every practice tending to single
5 out the accused from everyone else in the courtroom must be struck down.
6 Recognizing that jurors are quite aware that the defendant appearing
7 before them did not arrive there by choice or happenstance, we have never
8 tried, and could never hope, to eliminate from trial procedures every
9 reminder that the State has chosen to marshal its resources against a
10 defendant to punish him for allegedly criminal conduct. To guarantee a
11 defendant's due process rights under ordinary circumstances, our legal
12 system has instead placed primary reliance on the adversary system and
13 the presumption of innocence. When defense counsel vigorously
14 represents his client's interests and the trial judge assiduously works to
15 impress jurors with the need to presume the defendant's innocence, we
16 have trusted that a fair result can be obtained.

12 *Holbrook v. Flynn*, 475 U.S. at 567-568.

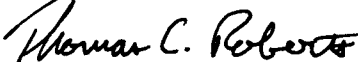
13 D. CONCLUSION:

14 The petitioner had ample opportunity to raise the issues he now argues in his PRP.
15 All the issues, except for the alleged attorney conflict, are based in the trial record. The
16 issues could and should have been raised in the direct appeal. The petitioner fails to
17 provide any evidence or information regarding his attorney's conflict.

18 The petitioner fails to demonstrate constitutional error resulting in actual prejudice.
19 The State respectfully requests that the petition be denied.

20 DATED: July 25, 2016.

21 MARK LINDQUIST
22 Pierce County
23 Prosecuting Attorney

24 

25 Thomas C. Roberts
Deputy Prosecuting Attorney
WSB # 17442

1 Certificate of Service:

2 The undersigned certifies that on this day she delivered by U.S. mail or
3 ABC-LMI delivery to the petitioner true and correct copies of the document to
4 which this certificate is attached. This statement is certified to be true and
correct under penalty of perjury of the laws of the State of Washington. Signed
at Tacoma, Washington, on the date below.

7-25-14 Sherryl Kar
Date Signature

APPENDIX “A”

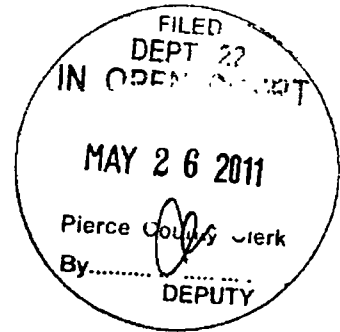
Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: 69B0CC4E-931B-4902-A9D0C8AD3EA7CF6C

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00527-7 36481873 JDSWCD 05-27-11



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00527-7

MAY 27 2011

vs *Melvin*
 RONALD JOSEPH MENDES,
aka Ronald Joseph Mendes

Defendant.

WARRANT OF COMMITMENT

- 1) ☐ County Jail
 2) ☒ Dept. of Corrections
 3) ☐ Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY.

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto.

[] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail)

X 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections, and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Department of Corrections custody).

+WARRANT OF
 COMMITMENT -1

Office of Prosecuting Attorney
 930 Tacoma Avenue S Room 946
 Tacoma, Washington 98402-2171
 Telephone: (253) 798-7400

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: 69B0CC4E-931B-4902-A9D0C8AD3EA7CF6C

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-00527-7

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for
classification, confinement and placement as ordered in the Judgment and Sentence.
(Sentence of confinement or placement not covered by Sections 1 and 2 above).

Dated: 5-26-11

By direction of the Honorable

JUDGE

KEVIN STOCK

CLERK

By: Melissa Engler

DEPUTY CLERK

CERTIFIED COPY DELIVERED TO SHERIFF

MAY 27 2011

By: Melissa Engler

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled
Court, do hereby certify that this foregoing
instrument is a true and correct copy of the
original now on file in my office.

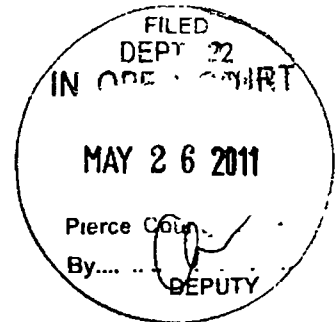
IN WITNESS WHEREOF, I hereunto set my
hand and the Seal of Said Court this

_____ day of _____.

KEVIN STOCK, Clerk

By: _____ Deputy

bs

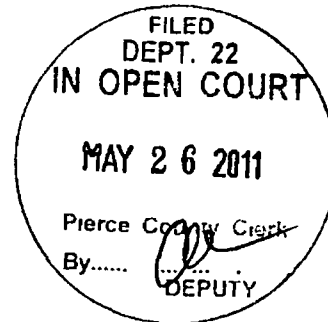


+WARRANT OF
COMMITMENT -2

Office of Prosecuting Attorney
930 Tacoma Avenue S Room 946
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

Case Number: 08-1-00527-7 Date: July 21, 2016
 SerialID: 69B0CC4E-931B-4902-A9D0C8AD3EA7CF6C
 Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-00527-7



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO 08-1-00527-7

vs

Melvin

RONALD JOSEPH MENDES

a/k/a RONALD JOSEPH MENDES

Defendant.

SID. WA13478431

DOB: 06/01/1963

JUDGMENT AND SENTENCE (FJS)

☒ Prison ☐ RCW 9.94A.712 Prison
 Confinement

☐ Jail One Year or Less

☐ First-Time Offender

☐ Special Sexual Offender Sentencing Alternative

☐ Special Drug Offender Sentencing Alternative

☐ Breaking The Cycle (BTC)

☐ Clerk's Action Required, para 4.5 (SDOSA),
 4.7 and 4.8 (SSOSA) 4.15.2, 5.3, 5.6 and 5.8

☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

I. HEARING

- 1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the (deputy) prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on May 13, 2011
 by ☐ plea ☒ jury-verdict ☐ bench trial of:

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
II	MURDER IN THE SECOND DEGREE (D4)	9A.32.050(1)(a); 9.941.010; 9.94A.530; 9.94A.533	FIREARM	01/28/08	080280001 PCSD
III	UNLAWFUL POSSESSION OF A FIREARM IN THE SECOND DEGREE (GGG104)*** Jury convicted October 6, 2008	9.41.010(12); 9.41.040(2)(a)(i)	NONE	01/28/08	080280001 PCSD

JUDGMENT AND SENTENCE (JS)
 (Felony) (7/2007) Page 1 of 12

Office of Prosecuting Attorney
 930 Tacoma Avenue S. Room 946
 Tacoma, Washington 98402-2171
 Telephone (253) 798-7400

11-9-05940-6

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: 69B0CC4E-931B-4902-A9D0C8AD3EA7CF6C

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-00527-7

COUNT	CRIME	RCW	ENHANCEMENT TYPE*	DATE OF CRIME	INCIDENT NO
IV	TAMPERING WITH A WITNESS (KK26)	9A.72.120(1)(b) 9.94A.535(2)(c)	NONE	12/21/2010	080280001 PCSD
V	TAMPERING WITH A WITNESS (KK26)	9A.72.120(1)(b) 9.94A.535(2)(c)	NONE	12/21/2010	080280001 PCSD
VI	TAMPERING WITH A WITNESS (KK26)	9A.72.120(1)(b) 9.94A.535(2)(c)	NONE	12/10/2010	080280001 PCSD
VII	TAMPERING WITH A WITNESS (KK25)	9A.72.120(1)(a) 9.94A.535(2)(c)	NONE	11/8/2010 - 11/18/2010	080280001 PCSD

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Horn, See RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, (SCF) Sexual Conduct with a Child for a Fee. See RCW 9.94A.533(8). (If the crime is a drug offense, include the type of drug in the second column.)

as charged in the Fourth Amended Information

- [X] A special verdict/finding for use of firearm was returned on Count(s) ^{*} RCW 9.94A.602, 9.94A.533.
 [] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589).
 [] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number).

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J ADULT JUV	TYPE OF CRIME
1	GRAND THEFT	02/05/97	Canyon County, ID	08/26/96	A	NV
2	FRAUD-INSUFFICIENT FUNDS-CHECK	06/02/98	Idaho County, ID	09/15/97	A	NV
3	ISSUING CHECK W/O FUNDS	06/22/98	Canyon County, ID	01/27/98		NV
4	VUCSA-UPCS METH	02/26/02	Pierce County, WA	11/07/01	A	NV
5	FORGERY	05/01/02	Pierce County, WA	01/01/02	A	NV
6	ASSAULT 3/DV	02/21/02	Pierce County, WA	01/16/02	A	NV
7	VUCSA-CONSP UPCS METH	06/28/04	Pierce County, WA	05/01/04	A	NV
8	PSP 2	06/28/04	Pierce County, WA	06/01/04	A	NV
9	ATT THEFT 1	11/15/04	Pierce County, WA	07/26/04	A	NV
10	FORGERY	11/15/04	Pierce County, WA	07/26/04	A	NV

- [] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

2.3 SENTENCING DATA.

COUNT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	PLUS ENHANCEMENTS	TOTAL STANDARD RANGE (including enhancements)	MAXIMUM TERM
II	9+	XIV	298 - 397 MONTHS	60 MONTHS	358-457 MONTHS	LIFE/ \$50,000
III	9+	III	51 - 60 MONTHS	NONE	51 - 60 MONTHS	5 YR/ \$10,000
IV	9+	III	51 - 60 MONTHS	NONE	51 - 60 MONTHS	5 YR/ \$10,000
V	9+	III	51 - 60 MONTHS	NONE	51 - 60 MONTHS	5 YR/ \$10,000
VI	9+	III	51 - 60 MONTHS	NONE	51 - 60 MONTHS	5 YR/ \$10,000
VII	9+	III	51 - 60 MONTHS	NONE	51 - 60 MONTHS	5 YR/ \$10,000

2.4 ☒ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

☐ within ☐ below the standard range for Count(s) _____.

☒ above the standard range for Count(s) VII.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence further and is consistent with the interests of justice and the purposes of the sentencing reform act.

☒ Aggravating factors were ☐ stipulated by the defendant, ☒ found by the court after the defendant waived jury trial, ☐ found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☒ did ☐ did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defend's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

☐ The following extraordinary circumstances exist that make payment of nonmandatory legal financial obligations inappropriate.

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: \$200 Court Costs, \$500 CVPA, \$100 DNA Testing, \$1,500 DAC recoup; \$7,097.32 Restitution

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1

3.2 ☐ The court DISMISSES Counts _____ ☐ The defendant is found NOT GUILTY of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court: (Pierce County Clerk, 930 Tacoma Ave #110, Tacoma WA 98402)

JASS CODE

RTN/RJN \$ 7097.32 Restitution to: CVC # VL 85544
 \$ _____ Restitution to: _____
 (Name and Address--address may be withheld and provided confidentially to Clerk's Office)
 PCV \$ 500.00 Crime Victim assessment
 DNA \$ 100.00 DNA Database Fee
 PUB \$ 1500.00 Court-Appointed Attorney Fees and Defense Costs
 FRC \$ 200.00 Criminal Filing Fee
 FCM \$ _____ Fine

OTHER LEGAL FINANCIAL OBLIGATIONS (specify below)

\$ _____ Other Costs for: _____
 \$ _____ Other Costs for: _____
 \$ 9397.32 TOTAL

☐ The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☐ shall be set by the prosecutor

☐ is scheduled for _____

☐ RESTITUTION Order Attached

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☒ All payments shall be made in accordance with the policies of the clerk, commencing immediately, unless the court specifically sets forth the rate herein: Not less than \$ _____ per month commencing _____ RCW 9.94.760. If the court does not set the rate herein, the defendant shall report to the clerk's office within 24 hours of the entry of the judgment and sentence to set up a payment plan.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b)

☐ **COSTS OF INCARCERATION.** In addition to other costs imposed herein, the court finds that the defendant has or is likely to have the means to pay the costs of incarceration, and the defendant is ordered to pay such costs at the statutory rate. RCW 10.01.160.

COLLECTION COSTS The defendant shall pay the costs of services to collect unpaid legal financial obligations per contract or statute. RCW 36.18.190, 9.94A.780 and 19.16.500

INTEREST The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090

COSTS ON APPEAL An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW. 10.73.160.

4.1b **ELECTRONIC MONITORING REIMBURSEMENT.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____ for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.2 ☒ **DNA TESTING.** The defendant shall have a blood/biological sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county or DOC, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☐ **HIV TESTING.** The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

4.3 **NO CONTACT**

The defendant shall not have contact with Danny Saylor's family (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life years (not to exceed the maximum statutory sentence).

☐ **Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order** is filed with this Judgment and Sentence.

4.4 **OTHER:** Property may have been taken into custody in conjunction with this case. Property may be returned to the rightful owner. Any claim for return of such property must be made within 90 days. After 90 days, if you do not make a claim, property may be disposed of according to law.

4.4a BOND IS HEREBY EXONERATED

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) CONFINEMENT RCW 9.94A.589 Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections (DOC).

397 months on Count II 60 months on Count V
 60 months on Count III 60 months on Count VI
 60 months on Count IV 60 months on Count VII

A special finding/verdict having been entered as indicated in Section 2.1, the defendant is sentenced to the following additional term of total confinement in the custody of the Department of Corrections:

60 months on Count No I _____ months on Count No _____
 _____ months on Count No _____ months on Count No _____
 _____ months on Count No _____ months on Count No _____

Sentence enhancements in Counts _____ shall run

☐ concurrent ☐ consecutive to each other

Sentence enhancements in Counts 2 shall be served

☒ flat time ☐ subject to earned good time credit

Actual number of months of total confinement ordered is: ~~397~~ 397 + 60 + 60 = 517 mo.

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____

CONSECUTIVE/CONCURRENT SENTENCES. RCW 9.94A.589 All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above at Section 2.3, and except for the following counts which shall be served consecutively:

concurrent to previously-imposed sentence on VP F chg

The sentence herein shall run consecutively to all felony sentences in other cause numbers imposed prior to the commission of the crime(s) being sentenced. The sentence herein shall run concurrently with felony sentences in other cause numbers imposed after the commission of the crime(s) being sentenced except for 11-~~11~~ 14-08 the following cause numbers. RCW 9.94A.589: _____

08-1-00527-7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Confinement shall commence immediately unless otherwise set forth here: _____

(c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 1215 days

4.6 [] COMMUNITY PLACEMENT (pre 7/1/00 offenses) is ordered as follows:

Count _____ for _____ months;

Count _____ for _____ months;

Count _____ for _____ months;

☒ COMMUNITY CUSTODY (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701)

(A) The defendant shall be on community custody for the longer of:

(1) the period of early release. RCW 9.94A.728(1)(2); or

(2) the period imposed by the court, as follows:

Count(s) 2 36 months for Serious Violent Offenses

Count(s) _____ 18 months for Violent Offenses

Count(s) _____ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(B) While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and 706 and (10) for sex offenses, submit to electronic monitoring if imposed by DOC. The defendant's residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

The court orders that during the period of supervision the defendant shall:

☒ consume no alcohol.

☒ have no contact with: Danny Saylor's family

☒ remain [] within [] outside of a specified geographical boundary, to wit: _____

per DOC/CCD

[] not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age

☒ participate in the following crime-related treatment or counseling services: per DOC

08-1-00527-7

☒ undergo an evaluation for treatment for ☐ domestic violence ☒ substance abuse
☐ mental health ☐ anger management and fully comply with all recommended treatment.

☒ comply with the following crime-related prohibitions:

NO use or poss of NON-prescribed drugs

☐ Other conditions:

☐ For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

PROVIDED. That under no circumstances shall the total term of confinement plus the term of community custody actually served exceed the statutory maximum for each offense

4.7 ☐ **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT** Any petition or motion for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purpose of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW

9.94A.505 The clerk of the court is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

5.4 **RESTITUTION HEARING.**

[] Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 **CRIMINAL ENFORCEMENT AND CIVIL COLLECTION.** Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. Per section 2.5 of this document, legal financial obligations are collectible by civil means. RCW 9.94A.634.

5.6 **FIREARMS** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040, 9.41.047

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION.** RCW 9A.44.130, 10.01.200.

N/A

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment, the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

08-1-00527-7

5 10 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: 5-26-11

JUDGE

Print name

John R. HickmanRosalie Martinelli

Deputy Prosecuting Attorney

Print name: Rosalie Martinelli

WSB # _____

Attorney for Defendant

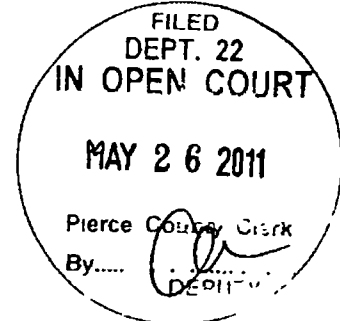
Print name: Sean WickensWSB # 24652

Defendant

Print name: Ronald Mendes

Refuses to sign w/o waiving objection re offer of notice

VOTING RIGHTS STATEMENT: RCW 10.64.140. I acknowledge that my right to vote has been lost due to felony convictions. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660

Defendant's signature: Ronald Mendes

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: 69B0CC4E-931B-4902-A9D0C8AD3EA7CF6C

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-00527-7

CERTIFICATE OF CLERK

CAUSE NUMBER of this case: 08-1-00527-7

I, KEVIN STOCK Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF COURT REPORTEREmily Dirton

Court Reporter

APPENDIX "F"

The defendant having been sentenced to the Department of Corrections for a:

- ☐ sex offense
☒ serious violent offense
☐ assault in the second degree
☐ any crime where the defendant or an accomplice was armed with a deadly weapon
☐ any felony under 69.50 and 69.52

The offender shall report to and be available for contact with the assigned community corrections officer as directed.

The offender shall work at Department of Corrections approved education, employment, and/or community service;

The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions.

An offender in community custody shall not unlawfully possess controlled substances;

The offender shall pay community placement fees as determined by DOC.

The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement.

The offender shall submit to affirmative acts necessary to monitor compliance with court orders as required by DOC.

The Court may also order any of the following special conditions:

- ☒ (I) The offender shall remain within, or outside of, a specified geographical boundary: per DOC/CCD
- ☒ (II) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals: family
- ☒ (III) The offender shall participate in crime-related treatment or counseling services.
- ☒ (IV) The offender shall not consume alcohol; or NON-prescribed drugs
- ☐ (V) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections, or
- ☒ (VI) The offender shall comply with any crime-related prohibitions.
- ☐ (VII) Other: _____

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: 69B0CC4E-931B-4902-A9D0C8AD3EA7CF6C

Certified By: Kevin Stock Pierce County Clerk, Washington

08-1-00527-7

IDENTIFICATION OF DEFENDANT

SID No WA13478431
(If no SID take fingerprint card for State Patrol)

Date of Birth 06/01/1963

FBI No. 544177EA6

Local ID No. PCSO# 138398

PCN No. 540270317

Other

Alias name, SSN, DOB: _____

Race:

☐ Asian/Pacific
Islander

☐ Black/African-
American

☒ Caucasian

Ethnicity:

☐ Hispanic

Sex:

☒ Male

☐ Native American

☐ Other:

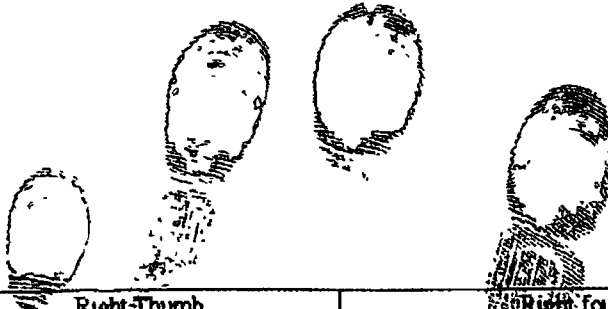
☒ Non-
Hispanic

☐ Female

FINGERPRINTS

Left four fingers taken simultaneously

Left Thumb



Right-Thumb

Right four fingers taken simultaneously



I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and
signature thereto Clerk of the Court, Deputy Clerk C. Guzman Dated: 5-26-11

DEFENDANT'S SIGNATURE: [Signature]DEFENDANT'S ADDRESS: In Custody

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of July, 2016



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: Jul 21, 2016 4:24 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: 69B0CC4E-931B-4902-A9D0C8AD3EA7CF6C**.

This document contains 15 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

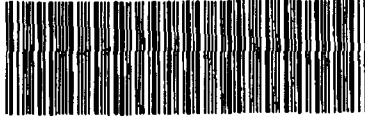
APPENDIX “B”

5/17/2011 13597 818368

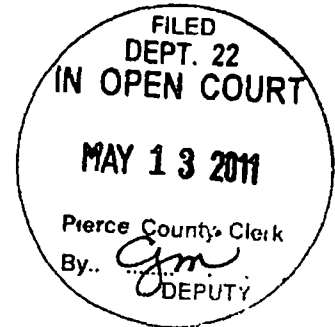
Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington



08-1-00527-7 36400187 CTINJY 05-18-11



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00527-7

vs.

RONALD MELVIN MENDES,

Defendant

COURT'S INSTRUCTIONS TO THE JURY

DATED this 9 day of May, 2011.

[Signature]
JUDGE

ORIGINAL

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the judicial assistant and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

In order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition. Each party is entitled to the benefit of all of the evidence, whether or not that party introduced it.

You are the sole judges of the credibility of each witness. You are also the sole judges of the value or weight to be given to the testimony of each witness. In considering a witness's testimony, you may consider these things: the opportunity of the witness to observe or know the things he or she testifies about; the ability of the witness to observe accurately; the quality of a witness's memory while testifying; the manner of the witness while testifying; any personal interest that the witness might have in the outcome or the issues; any bias or prejudice that the witness may have shown; the reasonableness of the witness's statements in the context of all of the other evidence, and any other factors that affect your evaluation or belief of a witness or your evaluation of his or her testimony.

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark, statement, or argument that is not supported by the evidence or the law in my instructions

You may have heard objections made by the lawyers during trial. Each party has the right to object to questions asked by another lawyer, and may have a duty to do so. These objections should not influence you. Do not make any assumptions or draw any conclusions based on a lawyer's objections.

Our state constitution prohibits a trial judge from making a comment on the evidence. It would be improper for me to express, by words or conduct, my personal

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

opinion about the value of testimony or other evidence. I have not intentionally done this. If it appeared to you that I have indicated my personal opinion in any way, either during trial or in giving these instructions, you must disregard this entirely.

You have nothing whatever to do with any punishment that may be imposed in case of a violation of the law. You may not consider the fact that punishment may follow conviction except insofar as it may tend to make you careful

The order of these instructions has no significance as to their relative importance. They are all important. In closing arguments, the lawyers may properly discuss specific instructions. During your deliberations, you must consider the instructions as a whole.

As jurors, you are officers of this court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you, not on sympathy, prejudice, or personal preference. To assure that all parties receive a fair trial, you must act impartially with an earnest desire to reach a proper verdict.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 2

The defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged. The State is the plaintiff and has the burden of proving each element of each crime beyond a reasonable doubt. The defendant has no burden of proving that a reasonable doubt exists as to these elements.

A defendant is presumed innocent. This presumption continues throughout the entire trial unless during your deliberations you find it has been overcome by the evidence beyond a reasonable doubt.

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO.

3

A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 4

The evidence that has been presented to you may be either direct or circumstantial. The term "direct evidence" refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term "circumstantial evidence" refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.

The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 5

A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.

You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 6

You may consider evidence that the defendant has been convicted of a crime only in deciding what weight or credibility to give to the defendant's testimony, and for no other purpose.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO

1

You may give such weight and credibility to any alleged out-of-court statements of the defendant as you see fit, taking into consideration the surrounding circumstances.

5/17/2011 13557 818378

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 8

A person commits the crime of Murder in the Second Degree (Intentional Murder) when, with intent to cause the death of another person but without premeditation, he causes the death of such person unless the killing is justifiable.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO.

9

A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 10

To convict the defendant of the crime of Murder in the Second Degree (Count 1, Intentional Murder), each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 28th day of January, 2008, the defendant shot Danny Saylor;
- (2) That the defendant acted with intent to cause the death of Danny Saylor;
- (3) That Danny Saylor died as a result of defendant's acts; and
- (4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 11

To constitute murder, there must be a causal connection between the criminal conduct of a defendant and the death of a human being such that the defendant's act was a proximate cause of the resulting death

The term "proximate cause" means a cause which, in a direct sequence, unbroken by any new independent cause, produces the death, and without which the death would not have happened.

There may be more than one proximate cause of a death.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 12

A person commits the crime of Murder in the Second Degree (Felony Murder) when he commits assault in the second degree and, in the course of and in furtherance of such crime or in immediate flight from such crime, he causes the death of a person other than one of the participants unless the killing is justifiable.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 13

To convict the defendant of the crime of Murder in the Second Degree (Count II, Felony Murder), each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 28th day of January, 2008, Danny Saylor was killed;
- (2) That the defendant was committing assault in the second degree;
- (3) That the defendant caused the death of Danny Saylor in the course of and in furtherance of such crime or in immediate flight from such crime;
- (4) That Danny Saylor was not a participant in the crime; and
- (5) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 14

A person commits the crime of assault in the second degree when he assaults
another with a deadly weapon

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 15

An assault is an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 16

Bodily injury means physical pain or injury, illness or an impairment of physical condition.

5/17/2011 13597 818379

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 17

A "participant" in a crime is a person who is involved in committing that crime, either as a principal or as an accomplice. A victim of a crime is not a "participant" in that crime.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 18

It is a defense to a charge of murder that the homicide was justifiable as defined in this instruction.

Homicide is justifiable when committed in the lawful defense of the slayer when:

(1) the slayer reasonably believed that the person slain intended to inflict death or great personal injury;

(2) the slayer reasonably believed that there was imminent danger of such harm being accomplished, and

(3) the slayer employed such force and means as a reasonably prudent person would use under the same or similar conditions as they reasonably appeared to the slayer, taking into consideration all the facts and circumstances as they appeared to him, at the time of and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the homicide was not justifiable. If you find the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 19

It is a defense to a charge of assault (applies to Count II, Felony Murder only) that the force used was lawful as defined in this instruction.

The use of force upon or toward the person of another is lawful when used by a person who reasonably believes that he is about to be injured in preventing or attempting to prevent an offense against the person, and when the force is not more than is necessary.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty as to this charge.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 20

No person may, by any intentional act reasonably likely to provoke a belligerent response, create a necessity for acting in self defense and thereupon kill another person. Therefore, if you find beyond a reasonable doubt that the defendant was the aggressor, and that defendant's acts and conduct provoked or commenced the fight, then self-defense is not available as a defense.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 21

The right of self-defense may be revived if the aggressor in good faith withdraws from the combat at such a time and in such a manner as to have clearly apprised his adversary that he in good faith was desisting, or intended to desist from further aggressive action.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 22

“Great personal injury” means an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering if it were inflicted upon either the slayer or another person.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 23

It is lawful for a person who is in a place where that person has a right to be and who has reasonable grounds for believing that he is being attacked to stand his ground and defend against such attack by the use of lawful force. The law does not impose a duty to retreat

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 24

A person commits the crime of Tampering with a Witness when he attempts to induce a witness or person he has reason to believe is about to be called as a witness in any official proceeding to testify falsely or to absent himself or herself from any official proceedings.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 25

To convict the defendant of the crime of Tampering with a Witness (Count IV), each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 21st day of December, 2010, the defendant attempted to induce Lori Palomo to absent herself from any official proceeding; and

(2) That Lori Palomo was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings; and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 26

To convict the defendant of the crime of Tampering with a Witness (Count V), each of the following elements of the crime must be proved beyond a reasonable doubt.

- (1) That on or about the 21st day of December, 2010, the defendant attempted to induce Charles "Chuck" Bollinger to absent himself from any official proceeding; and
- (2) That Charles "Chuck" Bollinger was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings; and
- (3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 27

To convict the defendant of the crime of Tampering with a Witness (Count VI), each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 21st day of December, 2010, the defendant attempted to induce McKay Brown to absent himself from any official proceeding; and
- (2) That McKay Brown was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings; and
- (3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 24

To convict the defendant of the crime of Tampering with a Witness (Count VII), each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 18th day of November, 2010, the defendant attempted to induce Judy Anderson to testify falsely; and

(2) That Judy Anderson was a witness or a person the defendant had reason to believe was about to be called as a witness in any official proceedings; and

(3) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO 29

"Official proceeding" means a proceeding heard before any judicial official
authorized to hear evidence under oath.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 36

As jurors, you have a duty to discuss the case with one another and to deliberate in an effort to reach a unanimous verdict. Each of you must decide the case for yourself, but only after you consider the evidence impartially with your fellow jurors. During your deliberations, you should not hesitate to re-examine your own views and to change your opinion based upon further review of the evidence and these instructions. You should not, however, surrender your honest belief about the value or significance of evidence solely because of the opinions of your fellow jurors. Nor should you change your mind just for the purpose of reaching a verdict.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO 31

When you begin deliberating, you should first select a presiding juror. The presiding juror's duty is to see that you discuss the issues in this case in an orderly and reasonable manner, that you discuss each issue submitted for your decision fully and fairly, and that each one of you has a chance to be heard on every question before you.

During your deliberations, you may discuss any notes that you have taken during the trial, if you wish. You have been allowed to take notes to assist you in remembering clearly, not to substitute for your memory or the memories or notes of other jurors. Do not assume, however, that your notes are more or less accurate than your memory.

You will need to rely on your notes and memory as to the testimony presented in this case. Testimony will rarely, if ever, be repeated for you during your deliberations.

If, after carefully reviewing the evidence and instructions, you feel a need to ask the court a legal or procedural question that you have been unable to answer, write the question out simply and clearly. In your question, do not state how the jury has voted. The presiding juror should sign and date the question and give it to the judicial assistant. I will confer with the lawyers to determine what response, if any, can be given.

You will be given the exhibits admitted in evidence, these instructions, and verdict forms for recording your verdict. Some exhibits and visual aids may have been used in court but will not go with you to the jury room. The exhibits that have been admitted into evidence will be available to you in the jury room.

You must fill in the blank provided in each verdict form the words "not guilty" or the word "guilty," according to the decision you reach.

Because this is a criminal case, each of you must agree for you to return a verdict on any count. When all of you have so agreed, fill in the verdict forms to express your

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

decision. The presiding juror must sign the verdict forms and notify the judicial assistant.

The judicial assistant will bring you into court to declare your verdict.

Case Number: 08-1-00527-7 Date: July 21, 2016
SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4
Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 32

You will also be given Special Verdict Forms for the crime of Murder in the Second Degree for the crimes charged in Count I and Count II. If you find the defendant not guilty on a count, do not use the Special Verdict Form for that count. If you find the defendant guilty on Count I and/or II, you will then use the Special Verdict Forms for the particular count or counts.

Because this is a criminal case, all twelve of you must agree in order to answer "yes" to the question posed in a Special Verdict Form, and you must unanimously be satisfied beyond a reasonable doubt that "yes" is the correct answer. The presiding juror must sign that Special Verdict Form.

Case Number: 08-1-00527-7 Date: July 21, 2016

SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4

Certified By: Kevin Stock Pierce County Clerk, Washington

INSTRUCTION NO. 33

For purposes of a special verdict, the State must prove beyond a reasonable doubt that the defendant was armed with a firearm at the time of the commission of the crime in Counts I and/or II.

A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 21 day of July, 2016



Kevin Stock, Pierce County Clerk

By /S/Rebecca Ahquin, Deputy.

Dated: Jul 21, 2016 4:24 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: C9A8099F-FC06-49A9-934567F7711DC3E4.

This document contains 37 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

PIERCE COUNTY PROSECUTOR

July 25, 2016 - 1:41 PM

Transmittal Letter

Document Uploaded: 5-prp2-487098-Response.pdf

Case Name: State v. Mendes

Court of Appeals Case Number: 48709-8

Is this a Personal Restraint Petition? ☒ Yes ☐ No

The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): ____

Personal Restraint Petition (PRP)

☒ Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ____

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

jeffreyerwinellis@gmail.com